IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

SECOND APPEAL NO:504/2004

Laxmi w/o Namdeo Shende Appellant

v e r s u s

1) Lanka w/o Jayvant Zade and 3 others :: RESPONDENTS

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Mr. Purushottam Dhok, Advocate for appellant

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CORAM: Mrs. Vasant A. Naik,J.
DATED: 21st August, 2007

1. Heard learned counsel for appellant.

2 Appellant is the original plaintiff. The suit was filed by the plaintiff for declaration, partition and separate possession of the suit property. Defendant No.1 is the sister of the plaintiff and the defendant Nos. 2, 3 and 4 are the brothers of the plaintiff. According to plaintiff, the plaintiff and the defendant no.1 are the joint owners of the suit property i.e. field survey No.52 and the said field came to their share in a family partition effected between the plaintiff and the defendant nos.1 to 3 in the year 1958. In view of the said partition, the plaintiff and defendant no.1 were jointly in possession of the suit property and maintained the property jointly since

then. Since the defendant no.1 moved the Talathi for deleting the names of plaintiff from the record of rights in respect of the suit property and also denied ownership of the plaintiff, the plaintiff instituted the present suit.

3. Defendant No.1 resisted the claim of the plaintiff and denied that the plaintiff and defendant no.1 were the joint owners of the suit property. It was further denied that the partition was effected between the brothers and sisters in the year 1958. Defendant No.1, however, admitted the relationship between the parties. According to the defendant no.1 her name name was recorded in the record of rights since the year 1952. Defendant nos. 2 and 3 also denied the claim of plaintiff and supported the case of defendant no.1.

4. The trial Court framed the necessary issues and considering the evidence tendered by the parties on record, came to the conclusion that the plaintiff had failed to prove that she became the joint owner of the suit field along with defendant no. 1. The trial Court further held that the suit filed by the plaintiff was liable to be dismissed and she had failed to prove her joint ownership over the suit property. Certain other issues were also answered against the plaintiff.

5. In an appeal filed by the plaintiff against the judgment passed by the trial

Court, the Additional District Judge, Yavatmal, by the judgment dated 5th September 2001, dismissed the appeal filed by the plaintiff. The findings recorded by the trial Court especially in regard to the question of joint ownership of the plaintiff over the suit property was confirmed by the first Appellate Court. Both the Courts below concurrently held that the plaintiff had failed to prove her ownership over the suit property and also failed to prove that the partition so effected between the brothers and sisters in the year 1958 and the property was allotted to the share of the plaintiff and defendant no.1 in the said partition. The Courts further considered the fact that the property was recorded in the name of defendant no.1 since the year 1952 and after a lapse of more than 12 years, the entries in the name of defendant no.1 were sought to be deleted at the behest of the plaintiff.

6. The findings recorded by both the Courts below are based on proper appreciation of material evidence on record. Since no substantial question of law arises for consideration in this Second Appeal, the same is dismissed,with no order as to costs.

JUDGE

sahare